



# ONTARIO JUDICIAL COUNCIL

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ANNUAL REPORT  
2023



***The Honourable Michael H. Tulloch***  
**CHIEF JUSTICE OF ONTARIO**  
**Co-Chair, Ontario Judicial Council**



***The Honourable Sharon M. Nicklas***  
**CHIEF JUSTICE**  
**ONTARIO COURT OF JUSTICE**  
**Co-Chair, Ontario Judicial Council**



ONTARIO JUDICIAL COUNCIL

June 26, 2024

The Honourable Doug Downey  
Attorney General for the Province of Ontario  
720 Bay Street, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2K1

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its twenty-eighth year of operation, in accordance with s. 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from January 1 to December 31, 2023.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael H. Tulloch".

Michael H. Tulloch  
Chief Justice of Ontario  
President of the Court of Appeal for Ontario

A handwritten signature in blue ink, appearing to read "Sharon M. Nicklas".

Sharon M. Nicklas  
Chief Justice  
Ontario Court of Justice

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# 1. INTRODUCTION

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The Ontario Judicial Council is an independent body established by the Province of Ontario under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, with a mandate to receive and investigate complaints about the conduct of provincially appointed judges. The *Courts of Justice Act* (also referred to as “the Act”) provisions establishing and governing the Ontario Judicial Council are available on the government’s e-laws website at:

- <https://www.ontario.ca/laws/statute/90c43>

The Act requires the Council to submit an Annual Report to the Attorney General on its affairs, including [case summaries](#) about complaints. Unless a public hearing has occurred, the Report must not include information that identifies a judge, a complainant or a witness.

The 2023 Annual Report provides information on the Council’s membership, its functions, policies and procedures, and its work during the 2023 reporting year. During the period of time covered by this Report, the Ontario Judicial Council had jurisdiction over approximately 370 provincially appointed judges, including full-time and *per diem* judges.

Provincial judges play an important role in the administration of justice in Ontario. They routinely preside over complex and serious family and criminal proceedings and perform difficult, and important work in the justice system. The judicial officers whose conduct is under the jurisdiction of the Ontario Judicial Council preside over proceedings in the Ontario Court of Justice.

The Ontario Court of Justice is the busiest trial court in Canada. In an average year, judges of the Court deal with over 230,000 adult and youth criminal cases and approximately 8,300 new family law proceedings. The Court holds sittings at approximately 140 locations across Ontario, ranging from large courthouses in cities to fly-in locations in northern Ontario.

You may find out more about the Council by reading this Annual Report and by visiting the Council’s website at:

- <https://www.ontariocourts.ca/ocj/ojc/>

The website contains:

- ◆ the Council’s current policies and procedures
- ◆ updates about any public hearings that are in progress
- ◆ decisions made in public hearings
- ◆ the Principles of Judicial Office

- ◆ the Continuing Education Plan for judges of the Ontario Court of Justice

## 2. COMPOSITION AND TERMS OF APPOINTMENT

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The *Courts of Justice Act* sets out the membership of the Ontario Judicial Council and terms of appointment:

- ◆ the Chief Justice of Ontario (or designate from the Court of Appeal)
- ◆ the Chief Justice of the Ontario Court of Justice (or designate from the Ontario Court of Justice)
- ◆ the Associate Chief Justice of the Ontario Court of Justice
- ◆ a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- ◆ the Treasurer of the Law Society of Ontario or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- ◆ a lawyer who is not a bencher of the Law Society of Ontario, appointed by the Law Society
- ◆ four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice of Ontario or another judge of the Court of Appeal designated by the Chief Justice chairs all public hearings regarding the conduct of a particular judge and chairs all proceedings dealing with applications for orders of accommodation of a judge's needs resulting from a disability or requests for continuation in office by a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice, or another judge of that Court designated by the Chief Justice, chairs all Council meetings.

The judges appointed by the Chief Justice, the lawyer appointed by the Law Society of Ontario, and the community members appointed by the Lieutenant Governor, hold office for 4-year terms and may not be re-appointed. In the appointment of these members to the Council, the importance of reflecting Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance on the Council is recognized.

### 3. MEMBERS

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The membership of the Ontario Judicial Council in 2023 was as follows:

#### Court of Appeal for Ontario

- ◆ The Honourable Michael H. Tulloch, Chief Justice of Ontario (Co-Chair)

#### Ontario Court of Justice

- ◆ The Honourable Lise Maisonneuve, Chief Justice of the Ontario Court of Justice (Co-Chair)  
(Until May 31, 2023)
- ◆ The Honourable Sharon M. Nicklas, Chief Justice of the Ontario Court of Justice (Co-Chair)  
(Effective June 1, 2023)
- ◆ The Honourable Aston Hall, Associate Chief Justice of the Ontario Court of Justice
- ◆ The Honourable Justice Esther Rosenberg, Regional Senior Justice (Central East Region)

Two judges appointed by the Chief Justice of the Ontario Court of Justice

- ◆ The Honourable Justice Manjusha Pawagi (Toronto)  
(Until September 25, 2023)
- ◆ The Honourable Justice Riun Shandler (Toronto)
- ◆ Local Administrative Judge Melanie Dunn (Northeast Region)  
(Effective September 26, 2023)

#### Lawyer Members

- ◆ Jacqueline Horvat, Treasurer of the Law Society of Ontario  
(Until October 29, 2023)
- ◆ Andrew Spurgeon, Designate for Treasurer of the Law Society of Ontario  
(Effective October 30, 2023)

Lawyer member appointed by the Law Society of Ontario

- ◆ Christopher D. Bredt, Borden Ladner Gervais LLP  
(Until October 23, 2023)

- ◆ Ena Chadha, Chair of the Board of Directors of the Human Rights Legal Support Centre  
(Effective October 24, 2023)

### Community Members

- ◆ Mauro Di Giovanni (Bradford), Former police officer (retired), President of Si2 Investigations Inc.  
(Until June 19, 2023)
- ◆ Victor Royce (Thornhill), Former President and CEO of Rolex Canada (retired)  
(Until June 19, 2023)
- ◆ Jasmit (Jaz) Singh (Oakville), Financial Planning Analyst, Peel Regional Police
- ◆ Cameron MacKay (Toronto), Vice-President, Communications and Public Engagement, Waterfront Toronto
- ◆ Jovica Palashevski (Mississauga), President of Global Consulting  
(Effective November 2, 2023)

### Temporary Members

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels.

During the period covered by this report, the following judge of the Ontario Court of Justice was appointed by the Chief Justice as a temporary member for purposes of meeting the quorum requirements of the legislation with respect to Judicial Council meetings and review panels:

- ◆ The Honourable Justice Manjusha Pawagi (Toronto)



## 4. COUNCIL ADMINISTRATION AND STAFF

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The Ontario Judicial Council and the Justices of the Peace Review Council share a six-member staff consisting of a Registrar, a Counsel/Deputy Registrar, two Assistant Registrars and an Administrative Assistant:

- Alison Warner – Registrar
- Shoshana Bentley-Jacobs – Counsel & Deputy Registrar
- Lauren Binhammer – Acting Counsel & Deputy Registrar
- Philip Trieu – Assistant Registrar
- Lily Miranda – Acting Assistant Registrar
- Astra Tantalo – Administrative Assistant

Council staff are responsible for service delivery in a number of areas including:

- responding to telephone and written inquiries from the public regarding the Council's mandate and procedures and providing requested assistance to members of the public who wish to make a complaint to the Council
- performing a preliminary review of new complaints received by the Council
- redirecting complainants who are not complaining about judicial conduct to the appropriate complaint body and/or to available legal resources
- supporting members of the Council in the investigation and review of complaints (e.g., ordering court records, retaining investigation counsel, preparing complaint-related correspondence, etc.)
- supporting meetings of the full Council, as well as numerous meetings of complaint subcommittees and review panels of the Council held throughout the year
- supporting and attending hearings of the Council into complaints
- posting communications on the Council's website regarding public hearings and decisions
- facilitating the consideration of judicial requests for compensation of legal fees incurred in the complaints process

- retaining and instructing counsel in relation to judicial reviews and/or appeals of decisions of the Council
- onboarding new members of the Council and offboarding members of the Council after the expiry of their terms
- assisting with the preparation of the Annual Report of the Council

In addition to supporting the work of the Ontario Judicial Council, Council staff also support the work of the Justices of the Peace Review Council.

## 5. FUNCTIONS OF THE JUDICIAL COUNCIL

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The *Courts of Justice Act* prescribes the following functions of the Council:

- ◆ to establish complaint subcommittees from amongst its members to receive and investigate complaints about the conduct of judges, and report to the Judicial Council;
- ◆ to establish review panels to consider complaints referred by the complaint subcommittees and decide upon dispositions under s. 51.4(18);
- ◆ to hold hearings under s. 51.6 when hearings are ordered by review panels pursuant to s. 51.4(18);
- ◆ to review and approve standards of conduct;
- ◆ to consider and approve continuing education plans for the judges;
- ◆ to consider applications by judges under s. 45 for orders for accommodation of needs arising from disabilities to enable them to perform their judicial duties; and,
- ◆ to consider requests by the Chief Justice of the Ontario Court of Justice or the Associate Chief Justices to continue in office beyond age sixty-five.

More information about each of the functions performed by the Council may be found in this Report.

The main function of the Judicial Council is to consider complaints about judicial conduct on the part of judges who preside on the Ontario Court of Justice. The Council's jurisdiction in this regard is limited to considering complaints about alleged judicial misconduct. Examples of judicial misconduct include inappropriate courtroom conduct (e.g., exhibiting a lack of restraint or civility in the courtroom, making discriminatory comments or engaging in discriminatory conduct towards any persons in the courtroom), or improper off-the-bench conduct.

The Council is not to be confused with an appellate court. The Council does not have the power to interfere with a court case or change a decision made by a judge. If a person believes that a judge made an error in assessing evidence or in deciding a legal issue, the proper way to proceed is by pursuing available legal remedies through the courts, such as an appeal.

The Council cannot provide legal advice or assistance to individuals, or intervene in litigation on behalf of a party.

The legislation that governs the Judicial Council establishes a judicial complaints process that is generally private and confidential in the investigation stages. If a hearing is ordered, the process becomes public, unless a hearing panel orders that there are exceptional circumstances to warrant a private hearing. The confidential and private nature of the complaint process required by the *Courts of Justice Act* is intended to achieve a balance between the accountability of judges for their conduct and the constitutionally protected value of judicial independence.

## 6. COMMUNICATIONS

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The website of the Ontario Judicial Council includes information about the Council, including the most current version of its policies and procedures, as well as information about hearings that are underway or that have been completed. Information on ongoing hearings is available under the link, “Public Hearings” at:

- <https://www.ontariocourts.ca/ocj/ojc/public-hearings/>

Information about decisions made during hearings are posted under the link, “Public Hearings Decisions” at:

- <https://www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/>

Each Annual Report of the Council is made available on the Council’s website at <https://www.ontariocourts.ca/ocj/ojc/annual-report/> no later than thirty days after it has been sent to the Attorney General.

## 7. EDUCATION PLAN

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Control over judicial education is within the sole purview of the Ontario Court of Justice. The Chief Justice of the Ontario Court of Justice is required by s. 51.10 of the *Courts of Justice Act* to implement and make public a plan for the continuing judicial education of provincial judges. The continuing education plan is developed by the Chief Justice in conjunction with the Education Secretariat. Pursuant to s. 51.10(1), the education plan must be approved by the Judicial Council.

The most recent version of the continuing education plan can be found on the Council's website under the link, "Continuing Education Plan" at:

- <https://www.ontariocourts.ca/ocj/ojc/education-plan/>

## 8. STANDARDS OF CONDUCT

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The Chief Justice of the Ontario Court of Justice is empowered to establish "standards of conduct for provincial judges" under s. 51.9 of the *Courts of Justice Act*.

A document entitled the *Principles of Judicial Office* was prepared by the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee in consultation with the Judges' Association and the judges of the Ontario Court of Justice. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of the Council's operation, as required by s. 51.9(1) of the Act.

The *Principles* set out standards of excellence and integrity to which judges should subscribe. They are not exhaustive. Intended to assist judges in addressing ethical and professional dilemmas, they also serve to assist the public in understanding the standards of conduct expected of judges both on and off the bench.

The *Principles* are advisory in nature. A breach does not automatically lead to a conclusion that there has been misconduct. However, the principles do set out a general framework of values and considerations that are relevant in evaluating allegations of improper conduct by a judge. The *Principles of Judicial Office* are posted on the Council's website at:

- <https://www.ontariocourts.ca/ocj/ojc/principles-of-judicial-office/>

In 2005, the Chief Justice, together with the Ontario Conference of Judges, proposed to the Judicial Council that the Canadian Judicial Council's *Ethical Principles for Judges* (1998) form part of the ethical standards governing the conduct of judges of the Ontario Court of Justice. The Judicial Council agreed.

In 2021, the Canadian Judicial Council adopted an updated version of the *Ethical Principles for Judges*, which provides guidance on the high standards of conduct expected of members of the judiciary both on and off the bench.

In 2023, the Chief Justice proposed to the Ontario Judicial Council that the Canadian Judicial Council's *Ethical Principles for Judges* (2021) form part of the ethical standards governing the conduct of judges of the Ontario Court of Justice. The Judicial Council agreed and they also form part of the ethical standards governing the conduct of judges of the Ontario Court of Justice.

## 9. JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

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A member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. Justice Riun Shandler acted as the Judicial Council's representative on the Judicial Appointments Advisory Committee during the period covered by this report.

## 10. APPLICATIONS FOR ACCOMMODATION

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A judge who believes that they are unable, because of a disability, to perform the essential duties of office unless their needs are accommodated may apply to the Council under s. 45 of the *Courts of Justice Act* for an order that such needs be accommodated to enable them to perform the essential duties.

The Ministry of the Attorney General, with input from the Office of the Chief Justice, has a process that provides a consistent means for judicial officers to request accommodation of needs arising from disabilities. The Council recognizes that the Ministry has access to the expertise and resources to properly assess and address requests for accommodation of needs. For the Council to properly consider applications for accommodation, the applicant judge must first exhaust the accommodation of needs process that is available through the Ministry of the Attorney General. When that process has been completed, if the judge wishes to apply to the Council, they must provide a copy of all documentation from the Ministry's application process, including medical evidence and decisions.

Rule 27 of the Council's Procedures sets out the policy governing applications for an order of accommodation:

- <https://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/>

One application for an accommodation order to enable the performance of essential duties was received during the reporting year. A review panel of the Council ordered that the application be held in abeyance pending the disposition of related complaint files.

## 11. THE JUDICIAL COMPLAINTS PROCESS

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### i. Who may file a complaint?

Any person may make a complaint to the Judicial Council about the conduct of a provincially appointed judge. The OJC Procedures Document requires that complaints must be made in writing and states that the Judicial Council does not have the authority to investigate anonymous complaints.

### ii. Does the Council have the legal authority to consider the complaint?

The Judicial Council has a legislative mandate to review complaints about the **conduct** of judges. The Council has no authority to review the **decisions** of judges to determine whether there were any errors in how the issues were determined or how conclusions were drawn. If a party involved in a court case thinks that a judge reached the wrong decision in the case, they may have legal remedies through the courts, such as an appeal or application for judicial review. Only a court can change a decision or order of a judge.

All correspondence sent to the Judicial Council is reviewed to determine whether a complaint is within the jurisdiction of the Council. In cases where the complaint may be within the jurisdiction of the Council, a complaint file is opened and a letter of acknowledgement is sent to the complainant.

If a complainant expresses dissatisfaction with a judge's decision in a court proceeding, a letter is sent advising the complainant that the Council has no power to change a decision made by a judge. In such cases, the complainant is advised that they may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about a lawyer or paralegal, a police officer, a Crown Attorney, member of court staff or about another office, the complainant is generally given the contact information of the appropriate body that may address their concerns.

If the complaint raises allegations of conduct about a judge arising from a court proceeding that is still ongoing, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This is to ensure that any investigation by the Council does not interfere and is not perceived to be interfering with ongoing court matters.

### iii. What happens in the complaints process?

The *Courts of Justice Act* and the procedures that have been established by the Council provide the framework for addressing complaints about judges. If a complaint is ordered to a public hearing, certain provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below.

### **a) Role of Complaint Subcommittees**

Once a complaint file is opened, it is assigned to a two-member complaint subcommittee of the Judicial Council for review. Complaint subcommittees are composed of a provincially appointed judge (other than the Chief Justice of the Ontario Court of Justice) and a community member. Complaints are generally not assigned to members from the same region where the judge who is the subject of the complaint presides. This avoids any risk or perception of bias or conflict of interest between a member of the Council and the subject judge.

Section 51.4(6) of the Act requires that the complaint subcommittee's investigation be conducted in private.

Where a complaint involves allegations about a judge's conduct in the courtroom, the complaint subcommittee will review relevant court transcripts, documents, and/or the audio recording of the proceeding.

Section 51.4(3) of the *Courts of Justice Act* empowers the complaint subcommittee to dismiss complaints which are either outside of the jurisdiction of the Council or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. If the subcommittee determines that the complaint lacks any merit, it may decide to summarily dismiss the complaint.

In some cases, the subcommittee may decide that further investigation into the complaint is needed. Pursuant to s. 51.4(5) of the Act, the subcommittee may retain independent counsel to assist in the investigation, for example, by conducting interviews with witnesses.

The subcommittee may also decide to invite the judge to submit a written response to the complaint. In such cases, a copy of all the materials considered by the subcommittee will be provided to the judge, together with a letter from the Judicial Council inviting a response. The judge may seek independent legal advice to provide assistance in responding to the complaint.

In cases where a complaint subcommittee determines that a complaint is not suitable for summary dismissal, the complaint subcommittee reports to a review panel of the Judicial Council. The report describes the allegations, the investigation, and recommends a disposition (i.e., dismissal, referral to the Chief Justice, or ordering the complaint to a hearing).

### **b) Interim Recommendations**

In the course of its investigation, the complaint subcommittee may also consider whether the allegation(s) warrant making an interim recommendation of suspension or re-assignment. Under s. 51.4(8) of the Act, the committee may make an interim recommendation to the Regional Senior Justice where the judge presides that the judge be suspended with pay or reassigned to another court location pending the final disposition of the complaint.

A Regional Senior Justice has discretion to accept or reject a complaint subcommittee's interim recommendation. If the Regional Senior Justice decides to suspend the judge pending the final disposition of the complaint, pursuant to the legislation, the judge will continue to be paid.

In deciding whether to make an interim recommendation, a complaint subcommittee shall consider whether any of the following factors are present:

- ◆ the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location;
- ◆ allowing the judge to continue to preside would likely bring the administration of justice into disrepute;
- ◆ the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies; and/or
- ◆ it is evident to the complaints committee that the judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaint subcommittee is considering making an interim recommendation, it may (but is not required to) provide the judge with an opportunity to make written submissions on the issue before making its decision.

Particulars of the factors behind the complaint subcommittee's interim recommendation are provided to both the Regional Senior Justice receiving the interim recommendation and to the judge.

The Procedures of the Council recognize that an exception to the general requirement of confidentiality in the complaints process is warranted where an interim recommendation has been made and the complaint has been referred to a hearing. In such circumstances, once the Notice of Hearing has been served on the judge and the complaints process has become public, the Council's website informs the public that the judge has been suspended or reassigned to a different location as a result of an interim recommendation.

Of the files closed in this reporting year, no judge who was the subject of a complaint was suspended or reassigned to another court location pending the final disposition of the complaints process.

### **c) Role of Review Panels**

Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a community member. Complaint subcommittee members who investigated the complaint do not sit on the review panel.



A review panel will review the report of the complaint subcommittee and all relevant materials considered by the subcommittee in its investigation.

Pursuant to s. 51.4(18), the review panel may:

- ◆ dismiss the complaint;
- ◆ refer it to the Chief Justice of the Ontario Court of Justice, and if the subject judge agrees, impose conditions (for example, counselling, remedial education) on the decision to refer the complaint;
- ◆ refer it to a mediator; or
- ◆ order that a hearing into the complaint be held.

Pursuant to the Council's conflict of interest policy, a Council member who is assigned to consider a complaint is required to immediately advise Council staff if they have an actual or potential conflict of interest, for example, as a result of a relationship with the subject judge, the complainant, or a witness involved in the complaint, so that the complaint may be promptly reassigned to a different member of the Council for consideration.

#### **d) Tests Applied by Review Panels in Disposing of Complaints**

The Procedures of the Council establish the following tests for the disposition of complaints.

##### **i) Dismissal**

A review panel may decide to dismiss a complaint on any of the following grounds:

- ◆ it is frivolous or an abuse of process;
- ◆ it falls outside of the Judicial Council's jurisdiction because it is a complaint about how a judge exercised judicial discretion;
- ◆ it does not include an allegation of judicial misconduct;
- ◆ it is not supported by the evidence gathered during the investigation; or,
- ◆ the actions or comments of the judge do not rise to the level of misconduct that requires further action on the part of the Council.

##### **ii) Referral to the Chief Justice**

A review panel may refer a complaint to the Chief Justice where a majority of the panel concludes that:

- ◆ referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint;
- ◆ the conduct complained of does not warrant another disposition; and
- ◆ there is some merit to the complaint.

A review panel may impose conditions of a referral to the Chief Justice, such as a requirement that the judge participate in a course of action or remedial training. Any condition of a referral to the Chief Justice may only be imposed with the judge's consent.

### **iii) Mediation**

A complaint *may not* be referred to mediation in the following circumstances:

- ◆ where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;
- ◆ where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- ◆ where the public interest requires a hearing of the complaint: s. 51.5(3) of the Act.

The Judicial Council has not established a mediation process pursuant to s. 51.5(1) of the Act.

### **iv) Order a Hearing**

A review panel may order a hearing if a majority of the panel is of the opinion that:

- ◆ there has been an allegation of judicial misconduct that has a basis in fact; and
- ◆ such allegations, if believed by a Hearing Panel, could result in a finding of judicial misconduct

### **e) Reporting the Disposition of Complaints by Complaint Subcommittees and Review Panels**

After a complaint subcommittee or review panel determines the appropriate disposition of a complaint, it communicates its decision to the complainant and, in most cases, to the judge.

Judges may waive notice of complaints made about their conduct in circumstances where the judge is not invited to respond to the complaint and the complaint is dismissed.

In accordance with the Procedures, if the Judicial Council decides to dismiss a complaint, brief reasons will be provided in a disposition letter sent to the complainant (and the judge, if notice is not waived) and in a case summary that appears in the Annual Report.

Because of the role of the Council in balancing judicial independence and accountability for judicial conduct, the legislation provides that proceedings, other than public hearings, are generally private and confidential. Through the Annual Report, the Council informs the public about complaints received and disposed of during the reporting year. In accordance with the governing legislation and procedures, except where a public hearing is ordered, the Annual Report does not identify the complainant or the judge who is the subject of the complaint.

#### **f) Hearings under s. 51.6 of the *Courts of Justice Act***

Hearings of the Judicial Council are presided over by four Council members who were neither part of the investigating complaint subcommittee nor the review panel. The Chief Justice of Ontario, or another judge designated by the Chief Justice, chairs the hearing panel. A judge of the Ontario Court of Justice, a lawyer member and a community member also sit on the hearing panel.

The legislation provides authority for the Chief Justice of the Ontario Court of Justice to appoint judicial members as “temporary members” of the Council where it is necessary to achieve quorum to meet the requirements of the Act. This also provides a means to ensure that none of the hearing panel members was involved in the earlier stages of the investigation.

With some exceptions, the *Statutory Powers Procedure Act* applies to hearings of the Judicial Council. Persons may be required by summons to give evidence under oath or affirmation at the hearing and to produce in evidence any documents or things which are relevant to the subject matter of the hearing and admissible at the hearing.

A hearing into a complaint is public unless a hearing panel determines, in accordance with s. 51.6(7) of the *Courts of Justice Act* and r. 20.1 of the OJC Procedures Document, that it should proceed in part or entirely in private. These criteria include whether the hearing involves matters of public security that may be disclosed, or whether intimate financial, personal or other matters may be disclosed of such nature that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

Where a complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness.

The Judicial Council engages legal counsel, called presenting counsel, for the purposes of preparing and presenting the case about the judge to the hearing panel. The legal counsel engaged by the Judicial Council operates independently of the Judicial Council. The duty of presenting counsel is not to seek a particular order against a judge, but to see that the complaint about the judge is evaluated fairly and dispassionately to the end of achieving a just result.

The judge has the right to be represented by counsel, or to act on their own behalf in any hearing under this procedure.

Under s. 51.6(11) of the Act, the hearing panel may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more of the following sanctions:

- ◆ a warning;
- ◆ a reprimand;
- ◆ an order to the judge to apologize to the complainant or to any other person;
- ◆ an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- ◆ suspension, with pay, for any period;
- ◆ suspension, without pay, but with benefits, for up to 30 days.

The hearing panel may also recommend to the Attorney General that the judge should be removed from office. A recommendation by the Council to the Attorney General that the judge be removed from office cannot be combined with any other disposition.

A judge may be removed from office only if a hearing panel of the Judicial Council, following a hearing under s. 51.6, recommends to the Attorney General that the judge should be removed on the ground that they have become incapacitated or disabled from the due execution of his or her office by reason of:

- ◆ inability, because of a disability, to perform the essential duties of their office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability);
- ◆ conduct that is incompatible with the due execution of office; or
- ◆ failure to perform the duties of their office.

Only the Lieutenant Governor in Council may act upon the recommendation of the hearing panel and remove the judge from office.

## 12. COMPENSATION FOR LEGAL COSTS

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When the Judicial Council has dealt with a complaint, s. 51.7 of the *Courts of Justice Act* permits a judge to request compensation for legal costs incurred in connection with the investigation and/or hearing. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the lawyer's statement of account to support the request.

The Judicial Council may make a recommendation to the Attorney General that a judge be compensated for their legal costs and indicate the amount of compensation recommended. Pursuant to s. 51.7(7) of the Act, the Council's order for compensation may relate to all or part of the judge's costs for legal services and must be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General is required to pay compensation to the judge if such a recommendation is made s. 51.7(8).

Where a hearing has been ordered, s. 51.7(2) allows a hearing panel to recommend compensation for all or part of the cost of legal services incurred in connection with both the investigation and the hearing. Where a complaint was made on or after July 8, 2020, and a recommendation for removal from office was made by a hearing panel, compensation shall not be recommended by the hearing panel: s. 51.7(5.1).

During the period of time covered by this Report, one request for compensation was received by a review panel of the Council.

## 13. COUNCIL PROCEDURES

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Under s. 51.1 of the *Courts of Justice Act*, the Council may establish rules of procedure for complaint subcommittees, review panels and hearing panels. As a means of informing the public about the complaints process, the Council must make the rules available to the public. The Council has established procedural rules for the complaints process which are posted on its website.

In 2023, the Judicial Council continued to refine and develop its procedures and policies. The procedural amendments reflect the Council's commitment to ensuring public confidence in the effectiveness of the judicial complaints process for provincially-appointed judges.

- ◆ Rule 4.5 was amended to remove the requirement that the name of the complainant be redacted from the letter of complaint that led to a public hearing when filed by Presenting Counsel as an appendix to a Notice of Hearing. In addition, clause (b) was added to rule 4.5 to afford discretionary authority to a Hearing Panel to impose a publication ban in respect of any information in a Notice of Hearing or a letter of complaint. A related amendment was made to rule 19.3 to remove the previous requirement that the public notice of a hearing published by the Registrar must not identify

any complainant or witness. Newly amended rule 4.5(b) allows for a Hearing Panel to impose a publication ban on the identities of complainants or witnesses.

A copy of the Council's current Procedures that incorporates these amendments is posted on the Judicial Council's website under the link "Policies and Procedures" at:

- <https://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/>

## **14. OVERVIEW OF COMPLAINT CASELOAD IN 2023**

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The Ontario Judicial Council works hard to administer an efficient and timely process to review complaints against provincial judges that fall within its jurisdiction.

In 2023, the Judicial Council received, reviewed and addressed over 200 letters of complaint. In addition, Council staff received and responded to over 400 telephone inquiries from complainants and members of the public during the reporting period.

Many complaints received by the Council do not involve judicial misconduct. For example, the Council receives a number of complaints that are about the decisions of provincial court judges rather than about their conduct. In addition, the Council receives complaints about federally-appointed judges, police, lawyers and Crown Attorneys, as well as complaints concerning administrative law proceedings.

Council staff review all such correspondence and provide written responses to complainants advising them of the appropriate body to which they may wish to direct their complaints. Depending on the nature of the complaint, Council staff also provide information about legal resources that could possibly assist such complainants.

In 2023, Council staff prepared over 100 responses to complainants to the Ontario Judicial Council providing them with information about the appropriate body to which they may wish to direct their complaint.

During the reporting period, 32 new complaint files were opened. In addition, 20 complaint files were carried forward from the previous reporting period, for a total of 52 open complaint files under consideration by the Council in 2023.

In the reporting period, the Council closed 20 complaint files. Of the 20 complaint files that were closed in 2023:

- 3 complaint files were opened between April 1, 2020 - December 31, 2021<sup>1</sup>
- 8 complaint files were opened in 2022
- 9 complaint files were opened in 2023

**OUTCOMES FOR COMPLAINT FILES CLOSED IN 2023**

Disposition	Number of Cases
Summarily dismissed – Out of jurisdiction, frivolous or an abuse of process	8
Dismissed by review panel – Out of jurisdiction, unfounded, not judicial misconduct	8
Referred to Chief Justice	3
Loss of Jurisdiction	1
Hearing	0
<b>TOTAL</b>	<b>20</b>

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<sup>1</sup> At a Judicial Council meeting in December 2021, the Council agreed to change its reporting year from the fiscal year to the calendar year on a go-forward basis. Accordingly, the reporting period for the 2020-2021 Annual Report was extended from March 31, 2021 to December 31, 2021.

**TYPES OF COMPLAINT FILES CLOSED IN 2023**

Complaint Type	Number of Cases	% of Caseload
Criminal Court	3	15%
Family Court	9	45%
Provincial Offences Appeal Court	0	0%
Other – Outside of court	8	40%
<b>TOTAL</b>	20	100%



## COMPLAINT FILE CASELOAD

	Fiscal year 2017/18	Fiscal year 2018/19	Fiscal year 2019/20	Apr.1/20 – Dec.31/21	Calendar Year 2022	Calendar Year 2023
Files opened during year	31	25	27	41 <sup>1</sup>	28	32
Files continued from previous year	100*	20	21	11 <sup>2</sup>	13	20
Total open files during year	131*	45	48	52	41	52
Files closed during year	111*	24	37	39 <sup>3</sup>	21	20
Files remaining at year end	20	21	11	13	20	32

\*In fiscal year 2017/18, 81 complaints addressed the conduct of Justice Zabel. The hearing took place in August 2017.

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<sup>1</sup> In fiscal year 2020/21, 26 files were opened. From April 1, 2021-December 31, 2021, 15 files were opened.

<sup>2</sup> Eleven files were carried over from fiscal year 2019/20 into fiscal year 2020/2021. Thirteen files were carried over from fiscal year 2020/21 into the April 1, 2021-December 31, 2021 period.

<sup>3</sup> Thirteen files were closed in fiscal year 2020/21. Twenty-six files were closed between April 1, 2021 – December 31, 2021.

## **FORMAL HEARINGS**

A review panel will order a hearing where a majority of the members of the review panel are of the opinion that there has been an allegation of judicial misconduct that has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct.

Hearing updates are available on the Council's website under the link "Public Hearings" at:

- <https://www.ontariocourts.ca/ocj/ojc/public-hearings/>

Decisions made in relation to each of the hearings are posted on the Council's website on the Public Hearings Decisions page at:

- <https://www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/>

No formal hearings of the Council were held in 2023.

## **15. CASE SUMMARIES**

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Except where a public hearing was ordered, a summary of each complaint for which the complaints process was completed, with identifying information for the subject judge and the complainant removed as required by the legislation, is provided below. Decisions on public hearings are posted on the Council's website.

### ***27-003/21, 27-004/24 and 27-006/21***

The Judicial Council received three complaints about the conduct of the subject judge prior to his appointment to the bench.

#### ***27-003/21***

The complainant, a lawyer, alleged that, at an evening social event during a professional conference, and in the presence of other lawyers, the judge indicated he liked her and kissed her on the forehead, which visibly offended her. The complainant alleged that the judge then said he liked another lawyer and kissed him as well. The complainant stated that at the time of the alleged incident, she was a young lawyer and the judge was in a more senior position. The complainant alleged that this incident led to rumours about her. The complainant also advised that she would be uncomfortable appearing before the judge.

#### ***27-004/21***

The complainant, a lawyer, alleged that several years earlier, the judge had been the subject of a police investigation involving an allegation that he had followed young women in his car. According to the complainant, no criminal charges were laid and the police file

was sealed. The complainant raised a concern as to whether the judge had reported this incident to the Judicial Appointments Advisory Committee in applying for a judicial appointment. The complainant also advised that he had learned about an allegation that the judge had sexually assaulted a young lawyer at a conference by kissing her.

### **27-006/21**

The complainant, a lawyer, alleged that she was subject to workplace sexual harassment and psychological abuse by the judge, who was her manager. The complainant stated that the judge's conduct created a toxic work environment and had adverse affects on her physical and mental health. The complainant further alleged that other female colleagues had similar experiences involving the judge. The complainant advised that the thought of appearing before the judge brought up an array of negative emotions.

### **Investigation**

In accordance with rule 8.3<sup>2</sup> of the OJC Procedures Document, the three complaints were assigned to the same complaint subcommittee, consisting of a judge and a community member, for review and investigation.

The complaint subcommittee retained investigating counsel to interview the three complainants and other witnesses with knowledge or information about the allegations. Investigating counsel was also instructed to obtain any documentation or correspondence relevant to the investigation.

The subcommittee subsequently invited the judge to respond to its concerns arising from its investigation of the complaints. The subcommittee reviewed the responses provided by the judge.

Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Judicial Council composed of two judges, a lawyer member and a community member. In total, the complaints were reviewed by six different members of the Council, including two community members.

The review panel considered the following materials provided by the complaint subcommittee: the report of the complaint subcommittee, the three letters of complaint, transcripts of the interviews with the complainants and witnesses, including related

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<sup>2</sup> Rule 8.3 provides that if the Judicial Council receives a new complaint about a judge who is already the subject of an open complaint file, and the new complaint is similar in nature to an outstanding complaint about that judge, the Registrar may assign the new complaint to the same complaint subcommittee that is investigating the earlier outstanding complaint.

documents and correspondence provided by these individuals, and the judge's written responses to the complaint subcommittee.

As a preliminary matter, the review panel agreed with the conclusion of the complaint subcommittee that the Council has jurisdiction to consider complaints that involve pre-appointment conduct where the alleged conduct is relevant to a judge's ability to execute their judicial functions and where the alleged conduct may undermine public confidence in the judge and in the administration of justice generally. The review panel observed that this conclusion is in keeping with the role of the Judicial Council in preserving judicial independence and the integrity of the administration of justice, as contemplated by ss. 51.3(1) and 51.8(1) of the *Courts of Justice Act*; see also *Therrien (Re)*, 2001 SCC 35, at paras. 54 and 58.

Although the review panel determined that the Council has jurisdiction to consider allegations concerning pre-appointment conduct, the review panel observed that the fact that the conduct in the complaints pre-dated the subject judge's appointment to the bench was a relevant factor in assessing the appropriate disposition of the complaints.

Regarding the alleged conduct at the conference, the review panel noted that in his response to the complaint subcommittee, the judge advised that, although he did not recall this incident, he was dismayed that he engaged in conduct that offended the complainant and wished to apologize to the complainant in an unreserved manner for his conduct and its impact on her.

Regarding the allegation about the judge's alleged pre-judicial conduct that was subject to a police investigation, the review panel obtained and considered the contents of the police investigation file, which were unsealed but provided in a redacted form to anonymize the names of witnesses. The review panel noted that the police investigation involved events that occurred many years before the judge's appointment to the bench and in relation to which the police determined that criminal charges were not warranted.

Regarding the allegations in Case File No. 27-006/21 about workplace harassment of a sexual nature, the review panel shared the view of the complaint subcommittee that the information provided by the complainant and witnesses tended to reflect a lack of understanding by the judge of professional boundaries, as opposed to raising concerns that he had engaged in sexual harassment or sexual assault. The review panel observed that in the judge's written responses to the concerns of the subcommittee, he acknowledged that he had not always responded to workplace pressures or managed workplace relationships in an appropriately professional manner. The review panel further observed that the judge's responses showed that he had reflected on his workplace conduct, demonstrated regret, and expressed a willingness to learn from the complaints process.

The complaints process through the Judicial Council is remedial in nature. Through reviewing and reflecting upon their conduct, judges may improve how they treat individuals and handle situations in the future. Rule 13.9 of the OJC Procedures states that if a majority of the members of the review panel conclude that:

- a) referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint;
- b) the conduct complained of does not warrant another disposition; and
- c) there is some merit to the complaint,

the review panel shall refer the complaint to the Chief Justice of the Ontario Court of Justice.

Having regard to all of the information related to the three complaints, including the consideration that the complaints raised concerns about the judge's conduct prior to his appointment to the bench, the review panel determined that the appropriate disposition was to refer the judge to the Chief Justice of the Ontario Court of Justice. After obtaining the judge's consent to the conditions of referral under s. 51.4(15) of the *Courts of Justice Act*, the review panel directed that the judge meet with the Chief Justice and attend such education as suggested by the Chief Justice related to professional boundaries. The review panel also directed that the judge should have an opportunity to express an apology to the complainants in Case File Nos. 27-003/21 and 27-006/21.

The Chief Justice met with the judge and provided a written report to the review panel about the meeting. In the report, the Chief Justice indicated that she discussed with the judge the very high standards of conduct that apply to members of the judiciary, including the high level of formality required of judges in interacting with all justice system participants.

Following this meeting, the Chief Justice directed the judge to undergo education on professional boundaries. The education was designed to serve the goals of promoting informed, ethical and reflective practices; increasing awareness and understanding of professional ethics and the concept of boundaries and its role and application in professional practice; reviewing relevant legal and professional guidelines and principles; addressing concerns regarding the judge's past practice or awareness; and developing resources and strategies to support best practices going forward.

The educator reported back to the Chief Justice regarding the judge's willing participation in the education and his acquired understanding of professional boundaries. The Chief Justice then provided a final written report to the review panel.

Based on the Chief Justice's reports, the review panel was satisfied that, through the judge's participation in the education directed by the Chief Justice, the judge demonstrated insight into the problematic nature of his past conduct and into how one's actions may be perceived and experienced by others, regardless of one's motives.

In accordance with the terms of the referral, the judge expressed apologies for his conduct in relation to the two specified complainants.

Having regard to the reports of the Chief Justice and the expressions of apology, the review panel was satisfied that the judge had learned through the judicial complaints process about the high level of conduct expected of the judiciary, and the importance of respecting professional boundaries. Given the steps that the judge had taken to reflect upon and learn from this experience, the review panel concluded that no further action in relation to the three complaints was required. Accordingly, the files were closed.

### **OJC-019-22**

The complainant was seeking custody of the child of a relative, who was a ward of a child protection agency, in a child protection proceeding before the subject judge.

Shortly before the proceeding concluded, the complainant sent a letter of complaint to the Council about the conduct of the subject judge. The complainant alleged that the judge:

- was “unprofessional, condescending, aggressive, and quite frankly just plain rude”;
- refused to address the matter, claiming that the judge had not received any paperwork;
- objected to the complainant’s dress and other conduct during Zoom proceedings, even though the complainant was not familiar with the protocol that applies in a Zoom hearing;
- attempted to dismiss the complainant from the Zoom proceedings because the complainant had a child present, and insisted that the complainant be alone in the room;
- routinely cut off or interrupted the lawyer for the child protection agency, and was condescending towards counsel, including telling the lawyer to look up case law; and
- gave the lawyer for the child protection agency “a hard time” about the lack of proper service on the parents of the child, even though the lawyer tried to explain that she had taken every measure possible to locate the parents.

According to the complainant, the judge’s concern for service on the child’s parents made the complainant feel “as though [the judge] is acting subjectively and not acting in the best interest of the child but instead is concentrating on how [the judge’s] decisions look on paper not on the effects of [the judge’s] decisions on [the child or the complainant]”. The complainant also advised that the complainant was “so offended for the lawyer as I would not tolerate anyone speaking to me in the tone” used by the judge.

The complainant expressed the view that the judge was not objective enough to handle family court matters, that the judge “needs not to bring [the judge’s] personal problems and attitude to work”, and that the judge would be a “perfect candidate” for “some type of seminar or class or workshop that judges can go to or through to be better at their job”.

After the child protection proceeding before the judge had finally concluded, the complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation.

The subcommittee reviewed the complaint letter and the audio recordings of the eight court appearances before the subject judge in the child protection proceeding. The subcommittee also obtained and reviewed the transcripts of six of the eight court appearances and reviewed the judge's reasons for decision.

The subcommittee invited the judge to respond to the complainant's allegations regarding the judge's treatment of counsel for the child protection agency, and the manner in which the judge communicated with the complainant regarding the court protocol for Zoom hearings.

The judge provided a written response to the complaint. In the response, the judge explained that the judge does not allow young children to be present during these types of hearings, as the subject matter is difficult, and adults are often upset, which in turn distresses the children. The judge noted that, as the complainant was not a party to the proceeding, the judge had expected that the lawyer for the child protection agency would have explained to the complainant the protocol for Zoom hearings. However, the subject judge advised that in the future, the judge would take care to explain the process.

The judge acknowledged being saddened by the complainant's impression of the judge, and expressed the belief that the complainant would have understood the tremendous respect and admiration the judge had for the complainant by the time of the final court appearance in this matter.

Regarding the allegations about the nature of the judge's interactions with counsel for the child protection agency, the judge observed that the court has an obligation to hold litigants to the requirements of the rules and legislation where the state has the power to remove children from their parents. The judge acknowledged having been firm in dealing with counsel in order to have a productive appearance in the brief time that had been scheduled for the matter. The judge expressed the belief that the judge has a good working relationship with the lawyer in question.

Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Council, composed of two judge members, a lawyer member and a community member. The review panel reviewed the subcommittee's report, the letter of complaint, the transcripts of the proceedings, and the audio recordings as recommended by the subcommittee.

The review panel determined that in part, the complaint related to the complainant's disagreement with the decisions the judge made, such as the steps the judge required the child protection agency to take before permitting service on the parents of the child to be dispensed with. The review panel noted that the complaints process is not an appeal process, and that the Judicial Council does not have jurisdiction to address allegations that take issue with the exercise of judicial discretion or judicial decision-making.

Based on the review panel's careful consideration of the relevant audio recordings and the transcripts, the review panel determined that the judge's firmness towards counsel was appropriate in the circumstances and there was no evidence capable of supporting a finding of judicial misconduct. The review panel observed that the subject judge worked with counsel in a firm manner to ensure productive court appearances, including when materials had not been filed in a timely manner. The judge provided counsel with constructive and specific directions with a view to upholding the obligation to ensure that the proceeding was procedurally fair to the parents of the child.

While the subject judge interrupted counsel from time to time, the review panel observed that the judge was attempting to engage counsel in a pointed discussion to address the issues one at a time. The review panel noted that judges are not held to a standard of perfection, and that case management styles may reasonably differ between judges without raising an issue of misconduct. Moreover, the review panel observed that judges are responsible for controlling proceedings to ensure an effective and efficient use of court time, and to ensure a fair hearing.

Regarding the complainant's allegations concerning the judge's approach to enforcing court protocols that apply in a remote hearing, the review panel noted that judges have an obligation to manage remote proceedings effectively and efficiently and have the responsibility for enforcing court protocols. The review panel found that the manner in which the subject judge managed the proceedings did not raise any issue of judicial misconduct. The review panel did not consider the judge to have been rude or to have otherwise acted inappropriately.

The review panel further observed that, in responding to the complaint, the judge had advised that in future proceedings involving an individual who is not a party to the proceeding, the judge would explain the court process without assuming counsel for the child protection agency had already done so.

The review panel placed significance on the consideration that, at the last court appearance in the proceeding – which occurred after the complainant had submitted the complaint to the Council – the judge sincerely thanked the complainant for caring for the child from the beginning. The review panel found that these comments would have conveyed to the complainant the high regard the judge had for the complainant.

The review panel concluded that there was no basis to support a finding of judicial misconduct by the judge, and that the allegations of misconduct were otherwise outside the jurisdiction of the Council to consider. Accordingly, the complaint was dismissed, and the file was closed.

### ***OJC-022-22, OJC-023-22 and OJC-024-22***

The complainant was a party in a Children's Aid Society proceeding involving custody of her son. Her son was removed from her care and was placed in the custody of a relative. The complainant was seeking a return of the child to her primary care.



In a letter to the Council, the complainant complained about the conduct of three different judges who presided over the CAS proceedings. The complainant made similar allegations against each judge, alleging that the judges:

- were rude, discouraging, difficult and disrespectful towards her;
- discriminated against her on grounds of age, race, disability, sexuality, pregnancy, and weight;
- screamed at her, embarrassed her, and told her to shut up;
- rolled their eyes when she spoke and told her she is too ugly to listen to and they don't want to hear her;
- ignored her, did not allow her to speak for herself, treated her as stupid and having a mental disorder;
- addressed the CAS and her relative without addressing her or allowing her to testify;
- showed favouritism to the CAS and her relative and ignored that her relative is abusing her son; and
- wrongly assumed that she will abuse her son because she was abused as a child.

The complainant wrote numerous complaint letters to the Council while the CAS matter was ongoing in the Ontario Court of Justice. The Council informed her on each occasion that the general policy of the Council is that it will not investigate complaints related to the conduct of a court proceeding until that proceeding, and any related proceedings are completed.

Following the completion of the proceedings, the complaints were assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation.

The subcommittee reviewed the complaint letters submitted by the complainant. They also listened to the audio recording of each of the court appearances before the subject judges at which the complainant was present.

### ***OJC-022-22***

The brief appearance before the subject judge was entirely a procedural one. The complainant was represented by counsel. There was no evidence capable of substantiating the complainant's allegations of improper conduct on the part of the judge.

### **OJC-023-22**

The complaint subcommittee observed that at the first appearance before the subject judge, which proceeded by teleconference, the judge was unfailingly polite and calm throughout the proceeding. On several occasions, the judge asked the complainant to be quiet in a patient and polite manner in response to her outbursts during the call when she interrupted other participants.

At the second appearance before the judge, the judge was again unfailingly polite and calm despite the frequent interruptions by the complainant. The judge was empathetic towards the complainant after she repeatedly expressed her desire to see her child.

The subcommittee noted that at both appearances before the judge, the complainant was represented by counsel.

The subcommittee found there was no evidence capable of substantiating the complainant's allegations of improper conduct on the part of the judge.

### **OJC-024-22**

The complaint subcommittee observed that the subject judge was very courteous towards the complainant and asked her respectfully to allow her lawyer, who was acting as an agent, to make submissions on her behalf. The judge also dealt tactfully and patiently with some technical issues that occurred during the Zoom proceeding and in allowing counsel for the complainant's adjournment request.

The complaint subcommittee noted that the judge also facilitated an off-the-record meeting between counsel, which resulted in the complainant receiving access to her child on an interim basis. There was no evidence in the record of the proceedings that was capable of substantiating the complainant's allegations of rudeness, bias or other improper conduct on the part of the judge.

Based on its review of these materials, the subcommittee determined that there was no evidence in the record suggesting any judicial misconduct on the part of the three subject judges.

Having regard to these considerations, the subcommittee summarily dismissed the complaints pursuant to s. 51.4(3) of the *Courts of Justice Act* and Rule 11.1 of the Council's Procedures on the basis that the complaints lacked any evidentiary basis and accordingly were frivolous.

### **OJC-025-22**

The complainant was a self-represented litigant who appeared before the subject judge on an application for review of the decision of the Chief Firearms Officer of Ontario to revoke his firearms license. The Chief Firearms Officer had revoked the complainant's firearms license after he was charged with assaulting his spouse. The assault prosecution against the complainant concluded when the complainant entered a peace bond, and the

Crown withdrew the charge. After hearing evidence and submissions from the parties, the subject judge confirmed the revocation of the complainant's firearms license.

In his letter to the Council, the complainant raised five categories of allegations:

1. Allegations about the conduct of the assigned Crown Attorney, including:
  - a. The Crown asked the trial coordinator to assign his case to the subject judge because he was a "very thorough" judge.
  - b. The Crown "resorted to demagogue" to justify the revocation of his firearms license.
  - c. The Crown was re-litigating the withdrawn assault charge.
2. Allegations about the judge's decision on the firearms reference or on other issues, including:
  - a. The judge's findings were unfair and redundant.
  - b. The judge's reasons were inadequate.
  - c. The judge's reasons "adopted" the assault charge withdrawn by the Crown and portrayed the complainant as an alcoholic and "a family abuser with anger management issues" without any evidence.
  - d. The judge failed to consider the complainant's evidence or submissions.
3. Allegations about delays and unnecessary appearances in the proceedings, including that the judge blamed the complainant for the delays when the complainant drew them to the court's attention, and a request to improve the judicial process and make the court scheduling process more transparent.
4. Allegations that the judge displayed prejudice towards the complainant, including:
  - a. The judge referred to the complainant as "the accused" and his spouse as "the complainant" in relation to the assault prosecution. When the complainant objected to this terminology, the judge explained what this terminology means.
  - b. The judge asked the Crown what "the accused's" admissions were in the assault prosecution, even though the complainant did not make any admissions.

- c. The judge did not show the complainant any compassion. For example, the judge was not interested in the complainant's submissions about why the complainant's spouse was upset on the night of the alleged assault and said, "the details ... are of no interest to me" and "it is not relevant why she was upset".
  - d. The judge yelled at the complainant in the courtroom, attempted to force the complainant to admit to punching his spouse, and accused him of lying to the court, using "a very loud tone of voice ... and ... some other intimidation tactics".
  - e. The judge constantly interrupted the complainant's submissions, dismissed his submissions right away, and then instructed him to go ahead with his submissions, which "disrupted the flow" of the complainant's submissions.
5. Allegations that the judge was working with the Crown or displayed bias in the Crown's favour, including:
- a. The Crown and the judge colluded. In support of this allegation, the complainant wrote that the judge referred on the record to another firearms case he worked on with the Crown.
  - b. The Crown and the judge had "semi-private" discussions about the proceedings, including on issues not related to the complainant's submissions.
  - c. The judge never interrupted the Crown, although the judge regularly interrupted the complainant.
  - d. The judge took advice, directions, and instructions from the Crown.

The complaint was assigned to a two-person complaint subcommittee of the Council, composed of a judge member and a community member, for review and investigation.

The subcommittee reviewed the complaint letter and enclosures provided by the complainant, the judge's reasons for decision in the firearms proceeding, the transcript of the proceedings before the judge, and the audio recordings of excerpts of the proceeding before the judge that the complainant had referred to in the letter of complaint in order to determine if the complaint required further action by the Judicial Council.

The subcommittee had regard to the ethical principles applicable to judges regarding managing court proceedings with self-represented litigants, which include:

- Judges have a responsibility to promote opportunities for all persons to understand the judicial process and to meaningfully present their case, whether or not they have legal representation. Self-represented persons may sometimes be uninformed about their rights and about the

consequences of the options they choose. Judges should take appropriate and reasonable measures to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons: Canadian Judicial Council's *Ethical Principles for Judges* (2021), 5.A.8.

- Judges should ensure that proceedings are conducted in an orderly and efficient manner and that the court process is not abused. An appropriate measure of firmness may be necessary to achieve this end. In the presence of challenging vexatious litigants, judges should be firm, decisive and at the same time respectful to ensure that litigants' rights are protected: Canadian Judicial Council's *Ethical Principles for Judges* (2021), 5.A.7.
- Depending on the circumstances and nature of the case, the presiding judge may explain the process, inquire whether the parties understand the process and the procedure, and provide information about the law and evidentiary requirements: Canadian Judicial Council's Statement of Principles on Self-represented Litigants and Accused Persons, Principle B-4.

Based on their review of these materials, the subcommittee members observed that, to the extent the complainant expressed concerns about the conduct of the assigned Crown Attorney, the Council has no jurisdiction to consider such allegations. The Council's jurisdiction is limited to reviewing the conduct of judges who preside on the Ontario Court of Justice.

The complaint subcommittee found that the complaint was in part an expression of the complainant's disagreement with the judge's assessment of the evidence, the procedural rulings made in the complainant's case, and the exercise of judicial discretion, which did not raise a matter of judicial conduct. The subcommittee noted that the complaints process is not an appeal process. The Judicial Council does not have jurisdiction to address allegations that take issue with the exercise of judicial discretion or judicial decision-making. Procedural rulings and evidentiary findings by a judge may be subject to appeal. However, they are not matters of judicial conduct within the Judicial Council's jurisdiction to consider.

Similarly, the Council has no jurisdiction to review the judge's decision about the causes of delay in the proceeding. The Council also has no jurisdiction over court scheduling processes in general or to suggest improvements to those processes.

The complaint subcommittee members agreed that the allegations that the judge demonstrated prejudice towards the complainant were without merit for the following reasons:

- The judge was entitled to use the words "accused" and "complainant" to refer to the complainant's and his spouse's roles in the assault proceeding,

and to explain to the complainant what these terms meant. This is accepted terminology in criminal proceedings.

- The judge asked the Crown about admissions made by the complainant in a phone call he made to the police, which was part of the evidence on the firearms proceeding. There was nothing inappropriate about the judge asking the Crown a question about the evidence. The judge understood that the complainant had not made any admissions in the context of the assault proceeding and that the charge against the complainant had been withdrawn.
- Although the judge told the complainant that his submissions about why his spouse was upset were not relevant, this exchange is not evidence of judicial misconduct. The judge was entitled to advise the complainant as a self-represented litigant about what evidence was relevant to the hearing, and to ensure the efficient use of the court's time during the proceeding.
- The complaint subcommittee reviewed the audio of the passages in the proceedings during which the judge was alleged to have yelled at the complainant, to have attempted to force him to admit to punching his spouse, and to have accused him of lying to the court. The complaint subcommittee found that there was no evidence capable of supporting the complainant's allegations. The complaint subcommittee noted that the judge did not yell at the complainant. Rather, the judge questioned the complainant in a firm tone about the evidence about the alleged assault, and the judge spoke firmly, but respectfully, to the complainant when the complainant mischaracterized the evidence regarding the alleged assault.
- The allegation that the judge constantly interrupted and disrupted the flow of the complainant's submissions was similarly found by the complaint subcommittee to be without merit. To the extent that the judge asked questions of the complainant, the judge took care to ask the complainant if he would prefer not to be interrupted. In addition, the judge explained to the complainant that the interruptions were intended to provide guidance on the law or the facts or redirect the complainant if he was rearguing issues that had been previously decided. The complaint subcommittee noted that these interventions were appropriate having regard to the obligation on judges to provide self-represented litigants with information about the law and evidentiary requirements.

The complaint subcommittee further found that the allegations that the judge was biased in favour of the Crown, or that the judge was colluding with the Crown, were without merit for the following reasons:

- The judge did not refer to another firearms case that the judge and the Crown worked on together, as alleged by the complainant. Rather, in the

passage of the transcript cited by the complainant, the judge asked the Crown about case law that the Crown had discussed earlier in the hearing.

- The record of proceedings revealed no basis to support the allegation that the Crown and the judge had lengthy semi-private discussions. The complaint subcommittee observed that the complainant was present during the hearing and was given an opportunity to make submissions, as was the Crown.
- The record of proceedings did not support the allegation that the judge never interrupted the Crown. The judge interrupted the Crown to ask questions about his submissions.
- The record of proceedings did not substantiate the allegation that the judge took advice, direction, or instructions from the Crown. The judge asked the Crown questions about the Crown's submissions, the evidence, and the applicable law, as the judge was entitled to do.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and Rule 11.1 of the Council's Procedures on the basis that the allegations were either outside the Council's jurisdiction or were otherwise frivolous and without merit.

### **OJC-026-22**

The complainant was a litigant in a family law proceeding. He filed a motion to hold his former wife in contempt of court, alleging that she failed to bring their child on time to scheduled visits and on several occasions, missed the meetings. The complainant's motion was heard by the subject judge. The subject judge dismissed the motion and ordered \$100 in costs against the complainant.

In his letter to the Council, the complainant made the following allegations against the judge:

- the complainant appeared at the scheduled time for the motion but the judge had not reviewed the materials so he asked the parties to return in the afternoon meaning that the complainant had to wait at the courthouse for several hours;
- the complainant told the judge that when he filed his contempt motion, he was allowed to submit only 10 pages, which prevented the complainant from showing his "proofs", whereas the respondent mother submitted 27 pages;
- the judge did not address any of the issues the complainant raised on the motion, including the issue of the mother being late to the agreed upon visits and missing several visits completely, and the fact that the complainant would travel 5-6 hours without being able to see his son;

- the judge did not give the complainant an opportunity to speak or explain the evidence he provided to the court;
- the judge did not address that the respondent mother brought her son to the visits at least 30 to 35 minutes late every single time;
- the judge treated the complainant unfairly, did not consider his evidence, and mishandled the proceeding.

The complainant also objected to the \$100 he was ordered to pay to the mother on the contempt motion, noting that he also incurred costs in preparing court documents and in scheduling the motion hearing.

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation.

The subcommittee reviewed the complaint letter, the transcript and audio recording of the contempt motion before the subject judge, and the endorsement of the judge on the contempt motion.

Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Council, composed of two judge members, a lawyer member and a community member. The review panel reviewed the complaint letter, the subcommittee's report, the transcript and audio of the proceeding before the judge and the judge's endorsement.

The review panel observed that the complainant's objection that the judge failed to consider evidence, or that he should not have awarded costs against him, involve issues of judicial decision-making that are outside the jurisdiction of the Council to consider. The Council has no jurisdiction to consider legal, evidentiary or procedural determinations by a judge. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. Evidentiary findings and costs decisions by a judge may be subject to appeal. However, they are not matters of judicial conduct within the Judicial Council's jurisdiction to consider.

Regarding the allegations that could be said to involve judicial conduct, the review panel concluded that there was no basis to support a finding of judicial misconduct, for the following reasons:

- The judge confirmed on the record that the motion was scheduled for 10 a.m., however, he had a pre-existing matter scheduled at the same time. The judge apologized that the parties had to wait.
- The judge's comments at the commencement of the hearing indicate that he was aware of the allegations in the complainant's notice of motion and that he had reviewed the motion materials.



- The judge provided the complainant with multiple opportunities to make submissions during the motion. He also attempted to explain to the complainant the high standard that was on him as the moving party to show that the respondent mother was in contempt of court.
- The complainant pointed out to the judge that he had been limited to filing a 10-page affidavit, whereas the respondent mother had been permitted to file a longer affidavit. Initially, the judge indicated that he would only review the evidence in the record. However, after observing that the respondent had been allowed to file materials in excess of the page limit, the judge permitted the complainant to file several pages of emails between the parties. The judge then asked the complainant not to speak until he had a chance to review the emails the complainant filed during the motion.
- Although there was some basis in the record to support the complainant's allegation that the judge told him not to speak, given a judge's duty and responsibility to ensure an effective and efficient use of court time, the review panel concluded the judge's direction to the complainant not to speak did not constitute evidence of judicial misconduct. On several occasions, the judge asked the complainant not to speak after he interrupted the judge during the judge's attempts to direct the complainant to his concerns about the evidentiary basis for the contempt motion. For example, the judge cut off the complainant in order to take him to the evidence in the affidavit of the respondent mother setting out the number of times the complainant had asked her to change the visitation schedule or indicating that the complainant had failed to show up for the scheduled visits. The judge then provided the complainant with an opportunity to provide his version of the events.
- On other occasions, the judge had allowed the respondent mother an opportunity to make submissions and the complainant interrupted her, so the judge asked him to stop talking.
- After approximately one hour of submissions, the judge indicated that he had made up his mind and did not want to hear anything further from either party. The complainant kept attempting to talk. After allowing him to make more submissions, the judge was firm in insisting that neither party should speak.

The review panel noted that a presiding judge has an obligation to ensure that proceedings are conducted in an orderly and efficient manner. The review panel shared the view of the complaint subcommittee that a judge is entitled to ensure an efficient and orderly use of court time.

Based on these findings, the review panel determined that the complainant's allegations

raised issues that are outside the jurisdiction of the Judicial Council, or that were unsubstantiated by the evidentiary record, or that were not capable of leading to a finding of judicial misconduct warranting further action by the Council.

Accordingly, the complaint was dismissed, and the file was closed.

### ***OJC-027-22 and OJC-028-22***

The complainant was a litigant in family law proceedings in the Ontario Court of Justice. He wrote to the Council complaining about two judges he appeared before on various dates during the proceedings.

Regarding the first subject judge (OJC-027-22), the complainant alleged that she was “cranky”, yelled at lawyers, and rolled her eyes in court. He wrote that at one court appearance, she commented, “shows the type of parent he is”, in relation to his approach to paying child support. According to the complainant, this comment indicated that the judge viewed him as “a deadbeat dad”. The complainant also raised concerns about the judge’s management of the proceedings, including that she attempted to have his motion dismissed by ordering a focus hearing and denied him the opportunity to have the Office of the Children’s Lawyer conduct a custody assessment.

Regarding the second subject judge (OJC-028-22), the complainant raised several allegations concerning a motion he brought regarding access and travel with his child over the Christmas holidays. The complainant alleged that:

- The judge’s decision regarding travel and access caused him to incur greater costs to travel with his child, because he had to reschedule his travel arrangements.
- The judge alleged that the complainant did not consult with the mother before making his travel plans and raised her voice and punished him for this. According to the complainant, there was no point consulting with the mother because she would not have agreed.
- The judge raised her voice and yelled at him during a court appearance.
- The judge provided legal advice to the mother.
- The judge wrongly relied on confidential settlement conference discussions in deciding the father’s motion regarding travel and access.

The complainant also objected to certain costs awards against him imposed by the second subject judge.

The complainant further alleged that both judges “appeared overly biased” against him as a father, that they did not appear to have completed quality training in mediation, and that their behaviour in court left him with undue stress and anxiety.

In addition to his concerns about the conduct of the two subject judges, the complainant raised concerns about the operation of family law courts in Canada, including his concern that delay in the legal process is detrimental to family relationships. He complained that in his case, he had to attend unnecessary court appearances. He also expressed concerns that fathers experience a more difficult time with the courts than mothers in family cases.

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation. The subcommittee reviewed the complaint letter and audio recordings of the proceedings before the two judges. In addition, the subcommittee reviewed the endorsements of the second judge on the complainant's motion regarding access and travel and information provided by Court Services Division about the procedural history of the matter.

Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Council, composed of two judge members, a lawyer member and a community member. The review panel reviewed the complaint letter, the subcommittee's report, the audio of the proceedings in question, and the endorsements of the second judge.

In relation to the complainant's concerns about family courts more generally, the subcommittee and the review panel members observed that the Judicial Council does not have the authority to act on complaints about the justice system in Ontario, or about the general operation of family courts in this province. The jurisdiction of the Council is limited to considering complaints about the conduct of individual judges who are members of the Ontario Court of Justice.

### ***OJC-027-22***

The review panel accepted the complaint subcommittee's determination that the allegation that the subject judge breached her ethical duties, or otherwise behaved inappropriately during the proceedings, were not supported by the record.

In particular, the audio recording did not support the complainant's allegation that the judge was "cranky" or that she yelled at counsel. The review panel agreed with the finding of the complaint subcommittee that there was no evidence that the subject judge made the comment, "shows the type of parent he is," in relation to child support. Rather, the judge questioned the complainant's counsel about the complainant's refusal to pay child support in the amount set out in the Child Support Guidelines, based on his income. The review panel concluded that nothing about the judge's exchange with counsel raised any concerns about improper judicial conduct. The review panel agreed with the subcommittee's finding that there was no evidence to support the complainant's allegation that the judge was biased against him.

In relation to the complainant's concerns about the judge's management of the proceedings, the review panel agreed with the complaint subcommittee's conclusion that these allegations relate to judicial decision-making, not conduct, and are outside the

jurisdiction of the Council to address. Decisions pertaining to procedure, the conduct of a hearing, as well as the assessment of evidence, fall under the authority of the judge and may be subject to appeal. However, they are not matters of judicial conduct within the Judicial Council's jurisdiction to consider. The review panel further observed that it is the responsibility and duty of the judge to control proceedings to ensure an effective and efficient use of court time, as well as a fair hearing.

### ***OJC-028-22***

The review panel agreed with the observation of the complaint subcommittee that, in part, the complaint was an expression of the complainant's disagreement with the judge's decisions regarding travel, access, and costs, which do not raise a matter of judicial conduct. The judicial complaints process is not an appeal process, and the Judicial Council does not have jurisdiction to address allegations that take issue with the exercise of judicial discretion or judicial decision-making.

The review panel accepted the complaint subcommittee's finding that the audio recordings of the proceedings before the judge did not reveal any basis to support the allegation that the judge raised her voice or yelled at the complainant during a court appearance. The audio recordings similarly did not support the allegation that the judge gave the mother legal advice in the proceedings.

In addition, the review panel agreed with the subcommittee's finding based on a review of the audio of the proceedings that there was no evidence to support the complainant's allegation that the judge was biased against him as a father.

Regarding the complainant's allegation that the judge improperly used confidential settlement discussions in deciding his motion, information provided by Court Services Division of the Ministry of the Attorney General confirmed that the court appearance that the complainant described as a settlement conference was not a settlement conference, but rather was a return date for his motion. Accordingly, there was no merit to the allegation that the judge improperly used confidential settlement conference discussions in deciding the motion.

Having regard to these considerations, the review panel determined that the allegations in the complaint related to both judges raised issues that were outside the jurisdiction of the Judicial Council, and that were otherwise unsubstantiated by the evidentiary record. Accordingly, the review panel dismissed both complaints and the files were closed.

### ***OJC-001-23***

The father of a complainant in a sexual assault trial in the Ontario Court of Justice wrote a letter of complaint to the Council concerning the judge who presided at the trial. The complainant's daughter was an adult at the time of the alleged offence. However, the complainant wrote that she is "developmentally delayed." The complainant's daughter testified at the trial, as did the complainant and the defendant.

In the subject judge's reasons for judgment, the judge found the defendant guilty of sexual assault. The judge granted the defendant's motion to stay the charge under s. 11(b) of the *Charter of Rights and Freedoms* based on a finding that the defendant's right to a trial within a reasonable time was violated. The judge imposed a common law peace bond with conditions that the defendant not have any contact with the victim.

In his complaint letter to the Council, the complainant made the following allegations concerning the judge:

- After the complainant testified as the Crown's main witness in the trial, the judge ordered him not to speak with anyone, including his daughter (the victim of the alleged sexual assault) about his examination.
- The judge ensured the defendant was well accommodated based on his claim he did not communicate in English even though he communicated during the assault and with the police officer in English; however, "there was an abysmal failure of the court to provide reasonable accommodation to [the complainant's] daughter for her mental instability, delayed learning and the court failed to protect the vulnerable child."
- The complainant's daughter did not have the ability to comprehend the questions presented to her and should have received the assistance of a lawyer who understood his daughter's situation.
- The complainant questioned how the judge came to make a determination that the complainant had abused his daughter. The complainant indicates that he was defamed by the court.
- The complainant alleges that there was a failure of the system. He points to the finding of guilt being stayed under s. 11(b) of the *Charter*. The end result of the assault and the outcome of the trial left the complainant and his daughter with psychological injury.

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation.

The subcommittee reviewed the complaint letter, transcript and audio of the trial, and the reasons for judgment of the subject judge.

Based on its review of these materials, the subcommittee determined that the complainant's allegation that the complainant was ordered not to speak with anyone, including his daughter, regarding his examination, is not capable of constituting evidence of judicial misconduct. Such an instruction is routine while a witness is under cross-examination and where there is an order excluding witnesses. The purpose of this type of instruction is to ensure that witnesses are not discussing their evidence during the trial,

so that the witnesses' evidence is given independently and is free from any real or perceived external influence. Moreover, the Council has no jurisdiction to review the appropriateness of a non-communication order imposed by a judge in a criminal trial.

The transcript revealed that the allegation that there was a failure to accommodate the daughter for her "mental instability, delayed learning" and vulnerability was not supported by the record of proceedings. The role of a judge is to remain unbiased and impartial in evaluating the credibility of witnesses who testify in court proceedings. The Crown is responsible for applying to the court for a support person for a victim or witness with a mental or physical disability while testifying in a criminal proceeding. After reviewing the transcript of the trial proceeding, the subcommittee observed that there appears to have been a support person from the Victim/Witness Assistance Program who was with the complainant's daughter while she testified. The purpose of a support person is not to speak and answer questions for the witness. A support person's duty is only to provide support for the witness during the court proceedings.

The complaint subcommittee further found that there was no basis to substantiate the complainant's allegation that the judge accused him of abusing his daughter. In the judge's reasons for decision, the judge referred to the defendant's statement to the police in which he claimed that the complainant's daughter had told the defendant that her father sexually abuses her. However, the complaint subcommittee observed that the judge did not accept or adopt the defendant's allegation in this regard. There was no statement in the reasons for judgment or in the record of proceedings to support the allegation that the judge made a determination that the complainant had abused his daughter.

Regarding the complainant's allegations that the stay of conviction entered by the judge under s. 11(b) of the *Charter of Rights and Freedoms* was unjust and/or adversely affected the complainant and his daughter, the subcommittee noted that these allegations concerned a matter of judicial decision-making rather than an issue of judicial conduct within the Council's jurisdiction to consider. The complainant's assertion that s. 11(b) should not override the result of a sexual assault conviction is not reviewable by the Judicial Council as a matter of judicial conduct.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and Rule 11.1 of the Council's Procedures on the basis that the complaint involved allegations that were unsubstantiated by the record of proceedings or were otherwise outside the Council's jurisdiction to consider.

### **OJC-002-23**

The complainant is the spouse of a criminal defence lawyer who routinely appears in the region where the subject judge presided. In his letter of complaint, the complainant alleged that, after he was diagnosed with some significant medical issues, his spouse sent an email to a judicial secretary advising of his medical issues and requesting that the information be kept discreet. The medical information was provided in anticipation of his spouse having to make frequent adjournment requests due to the complainant's medical

treatment, so that it would not be necessary to provide the court with medical information each time an adjournment was required.

The complainant alleged that it subsequently came to his attention from two people he knew, who are not judges or lawyers, that the subject judge disclosed the complainant's medical diagnosis to them for no apparent reason. The complainant alleged that the disclosure of his medical information involved a flagrant disregard for his personal privacy and a breach of trust.

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and a community member, for review.

The subcommittee reviewed the complaint letter. Based on this review, the subcommittee requested that the complainant provide the names and contact information of the two individuals mentioned in his letter and the circumstances of the communications with them. The Council did not receive a response from the complainant, including after sending him a follow-up letter.

Before a final determination could be made on the complaint, the Ontario Judicial Council received confirmation that the subject judge was no longer a judge of the Ontario Court of Justice. Accordingly, the Ontario Judicial Council lost jurisdiction to continue with the complaint process. The complaint file was administratively closed due to a loss of jurisdiction.

### ***OJC-003-23 and OJC-004-23***

These complaint files involved multiple letters of complaint regarding the conduct of the same judge.

The first complainant was a defendant in a criminal trial conducted by the subject judge. The judge convicted the complainant and sentenced him to a period of incarceration. The complainant submitted his first complaint letter at a time when his appeal from conviction was pending before the Court of Appeal for Ontario. The Council advised the complainant that, pursuant to Rule 4.7 of the Council's Procedures, the Council will generally not investigate complaints that relate to ongoing court matters. The complainant was further advised that if he wished to pursue his complaint, he should contact the Council once his court matter was fully concluded.

The first complainant subsequently wrote a second letter to the Council in which he asked the Council to reconsider the applicability of the Council's policy under Rule 4.7. This request was referred to a complaint subcommittee, composed of a judge and a community member of the Council, for consideration. The complaint subcommittee determined that there was no basis to depart from Rule 4.7 and the complainant was so informed.

The complainant then wrote a third letter to the Council advising that his appeal would be resolved by the time the Council received the letter. The complainant appended letters

from two anonymous individuals who indicated that they shared the concerns articulated in his complaint letters.

After receiving this third letter, the Council determined that the appeal in the Court of Appeal had been recently dismissed. The Council informed the first complainant that his three complaint letters would be treated as a consolidated complaint and would be referred to a complaint subcommittee for review. The Council also informed the first complainant of the Council's policy that it does not have the authority under the *Courts of Justice Act* to act on anonymous complaints: Rule 4.2.

At the same time, a second complainant wrote a letter to the Council in support of the first complainant's complaints. The second complainant wrote that as a result of reviewing the first complainant's three successive letters, he felt disillusioned, disappointed, and upset that the subject judge was appointed. The second complainant advised that his confidence in the justice system had been undermined. He also indicated that he had shared his concerns with his personal and professional networks.

The Council assigned the complaints to the same two-person subcommittee of the Council, composed of a judge member and community member, in accordance with Rule 8.3 of the Council's Procedures.

The first complainant made several allegations about the judge in his three letters to the Council, which may be summarized as follows:

- The judge did not wear a mask during his trial, contrary to the pandemic protocols in place at the time. The judge also allowed a police officer to be present in the courtroom unmasked, which put others in the courtroom at risk. The first complainant also alleged that during his trial, the judge rolled their eyes, frowned, shook their head, sighed loudly, and glared at the complainant and his counsel. The first complainant also raised concerns about the bail conditions imposed by the judge and alleged that the judge misunderstood the evidence.
- The judge had given inconsistent treatment to expert evidence regarding the pandemic when compared with the treatment of the same evidence by the Superior Court of Justice. The first complainant further alleged that the judge's view of evidence relating to the pandemic changed over time. The complainant alleged that this inconsistent treatment of expert evidence reflected racial bias and was destructive of the public's trust and confidence in the judiciary.
- Prior to their appointment, the judge engaged in unethical conduct as a Crown attorney.
- The complainant alleged that the judge had engaged in inappropriate public commentary in various social media posts from their social media account, which were contrary to the ethical principles requiring that judges



maintain their personal conduct at a level that will ensure the public's trust and confidence. The complainant provided screenshots of various social media posts attributed to the judge after their appointment to the bench. Some of these posts were critical of the local health department and of medical experts in the context of the pandemic and commented on statistics regarding the effects of Covid-19 on the life expectancy of racialized people. Other posts attributed to the judge allegedly expressed support for the Queen, criticized politicians, and expressed support for Conservative politicians. The first complainant wrote that these public posts affected the judge's reputation and were inconsistent with the judge's ethical obligation not to participate in partisan politics. The complainant further alleged that the judge identified themselves as a judge on social media, which according to the complainant, was also contrary to the ethical principles applicable to the judiciary.

As part of its investigation, the subcommittee invited the judge to respond to the complainants' allegations regarding the judge's pre-appointment conduct as a Crown attorney and use of social media while on the bench. The subcommittee reviewed the judge's response to the concerns it had expressed in the invitation to respond to the allegations.

Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Council, composed of two judge members, a lawyer member and a community member. The review panel reviewed the correspondence provided by the two complainants, the subcommittee's report, the letter inviting the judge to respond, and the written response provided by the judge.

The review panel observed that some of the allegations made by the first complainant were expressions of his disagreement with the judge's decision-making, including criticisms of how the judge managed the trial, the terms the judge included in the complainant's bail order, and the judge's sentencing decision and reasons for sentence in other cases. The review panel noted that the Council has no jurisdiction to consider legal, evidentiary or procedural determinations by a judge, or to review the correctness of their reasons for decision. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. Procedural rulings and evidentiary findings by a judge may be subject to appeal. However, they are not matters of judicial conduct within the Judicial Council's jurisdiction to consider.

Regarding the allegations about mask-wearing during the complainant's trial, the review panel observed that judges have discretion to manage their courtrooms as they see fit in accordance with the principle of judicial independence. In addition, the review panel noted that the precautionary measures in place at the time for conducting court operations did not make it mandatory for judges to wear face coverings in the courtroom. While other justice sector partners and members of the public were required to wear face coverings in the courtroom, there were several exceptions to this rule, including for individuals testifying or making submissions in court or with medical or religious exemptions. Assuming the judge and a police officer did not wear a mask in court, as alleged by the

complainant, the review panel determined that this did not raise an ethical concern requiring the Council's intervention.

Regarding the allegations about the judge's facial expressions and gestures during the complainant's trial, the review panel determined that this aspect of the complaint, even if true, did not give rise to any ethical concerns that warranted further action. In reaching this conclusion, the review panel noted the complainant's expressed disagreement with the judge's decision-making, the subjective nature of interpreting facial expressions and gestures, and the judge's stated commitment, in their response, to integrity and impartiality.

Regarding the allegations made by the first complainant related to the judge's conduct as a Crown attorney, the review panel observed from the judge's response to the complaint subcommittee that the judge had fully disclosed the incident in question to the Judicial Appointments Advisory Committee (JAAC) prior to being appointed to the bench. Based on the judge's response to the complaint subcommittee, the review panel shared the view of the complaint subcommittee that the JAAC would have been fully aware of this issue when making their recommendations to the Attorney General.

Regarding the allegations by both complainants related to the judge's use of social media, the review panel shared the view of the complaint subcommittee that the judge's response revealed that the judge took very seriously the concerns of the complaint subcommittee regarding the use of public social media by a judge. The response revealed that the judge had sought out legal advice and the advice of a senior jurist in response to the subcommittee's concerns regarding the need to maintain appropriate boundaries to protect the integrity of the administration of justice and to ensure the public's trust and confidence. The judge acknowledged in their response that ensuring the public's trust and confidence includes not participating in any partisan political activity as a judge.

Further, the review panel observed that the judge acknowledged that the impugned social media posts were theirs and that the judge had confirmed that they had since deleted the account. The judge fully recognized and acknowledged the concerns raised by the social media posts, including the need for judges to be removed from partisan politics and to maintain distance from controversial political issues. The judge confirmed that they would no longer be commenting publicly on politics or controversial political issues on social media or elsewhere.

The response from the judge included a report from a senior member of the bench confirming that the judge sought mentorship advice regarding the complaints. This report confirmed that the subject judge was very receptive to the advice provided by the senior jurist, including the advice received on the importance of a judge's public conduct in preserving and promoting confidence in the justice system. The review panel observed that the senior jurist was confident that the judge would make the changes necessary to become an even better judge.

The review panel agreed with the complaint subcommittee that the judge had treated the complaints process as a learning opportunity to reflect and change their behaviour

regarding the use of social media. Accordingly, the review panel concluded that no further remedial action was required. As the remaining allegations were outside the Council's jurisdiction to consider, or did not raise an issue of judicial misconduct, the review panel dismissed the complaints and the files were closed.

### ***OJC-005-23***

The complainant was the former landlord of the subject judge. The judge entered into a 3-year lease agreement to rent a house owned by the complainant.

In a letter to the Council, the complainant wrote that the judge's judicial status was an important factor in the complainant's decision to accept the judge as a tenant. The complainant believed that judges are required to have "the highest integrity" in their personal dealings.

The complainant alleged that the judge breached the lease agreement after staying less than 30 days at the property. In particular, the complainant stated that the judge falsely accused the complainant of misrepresenting the square footage of the rental property in order to justify breaking the lease. The complainant indicated that the judge was unable to provide any proof of such a misrepresentation and noted that the property's listing did not provide the square footage. Rather, the listing stated that prospective tenants and their representatives should verify any and all measurements provided.

The complainant alleged that the judge knew that the complainant would send the judge a notice of non-payment of rent and that the judge used this notice as grounds to invalidate the remainder of the lease, and terminate liability for payment of rent. The complainant further asserted that the judge took advantage of the backlogged Landlord and Tenant Board based on the judge's knowledge of the legal system, and "weaponized" this knowledge and contacts in the legal community to break the lease without any consequences.

The complainant concluded that the judge disregarded a signed contract and made false allegations of misrepresentation, which diminished the complainant's respect for the judiciary and shocked members of the community who have been made aware of this story.

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation. In addition to reviewing the complaint letter, the subcommittee requested and received from the complainant a copy of the lease agreement, the property listing, and other written communications said to be relevant to the allegation that the judge falsely accused the complainant of misrepresenting the size of the property. The subcommittee reviewed the documents provided by the complainant.

The subcommittee subsequently sent a letter to the judge inviting a response to its concerns arising from the complaint and its investigation. The subcommittee received and reviewed the response provided by the judge and by the judge's counsel.

Upon concluding its investigation, the subcommittee prepared a written report on its investigation for consideration by a four-member review panel of the Council, composed of two judge members, a lawyer member and a community member. The review panel reviewed the report of the subcommittee as well as all the materials reviewed by the subcommittee in its investigation.

The review panel observed that the correspondence between the complainant and the judge showed that the judge wrote to the complainant using a judicial email account. The review panel shared the subcommittee's concern regarding the propriety of the judge using a judicial email address to engage in personal and potentially contentious correspondence about a legal matter.

The review panel further noted that in this email, the judge advised the complainant that the decision to lease the property was based on the representation in the listing that it was 2,300 square feet. The email stated that the judge had since obtained a professional measurement of the house which confirmed that it was only approximately 1,700 square feet. The judge said that this constituted a material misrepresentation, and advised that the judge would be vacating the complainant's property. The judge also told the complainant that the complainant could keep the last month's rent deposit.

The review panel observed that in the complainant's email response to the judge, the complainant denied misrepresenting the property, and stated that the listing did not provide a square footage. The complainant referred to the notes to the listing that stated, "Tenant(s) & Tenant(s) Agent to Verify Measurements". The complainant asked the judge to provide documentation supporting the assertion that there had been a misrepresentation. The review panel observed that the judge's lawyer responded to this email, confirming the judge's intention to vacate the property.

The review panel noted that in the response to the complaint subcommittee of the Council, the judge denied the allegation about having lied to the complainant about the square footage being advertised as 2,300 square feet. The subject judge recalled seeing several listings (not the MLS listing the complainant provided in the complaints process) that advertised the property as being 2,300 square feet, although the judge could not recall the specific websites with these listings.

The review panel observed that in the response, the judge denied having taken advantage of the judicial position in any interactions with the complainant. The judge also denied the allegation of having intentionally caused the complainant to give notice to terminate the lease after advising the complainant of the intention to vacate. The judge further denied having any special knowledge of the state of cases at the Landlord and Tenant Board, or having any prior dealings with the tribunal or any contacts there.

The review panel observed that the judge confirmed that, given the complaint subcommittee's concern about using a court email address for personal correspondence, the judge had obtained a separate email address for any non-court related matters going forward. The review panel agreed with the subcommittee that, given the judge's

assurance, the remedial role of the complaints process did not require any further action by the Council in this respect.

With respect to the remainder of the allegations, the review panel noted that the judge denied having done anything improper or unethical in the judge's dealings with the complainant. Although the judge was not able to provide a written copy of a website listing for the property that showed the square footage, the review panel concluded that there was no basis to substantiate the complainant's allegation that the judge had lied on this issue to justify having breached the lease agreement.

In addition, the review panel noted that the legal issues raised by the complainant, such as whether there was a material misrepresentation and/or a breach of the lease agreement, are matters that could be raised in legal proceedings before the Landlord and Tenant Board or the Small Claims Court of the Superior Court of Justice. The review panel observed that the Ontario Judicial Council's jurisdiction is limited to assessing whether the judge's conduct fell below the high standards of personal conduct that members of the judiciary are expected to uphold in order to preserve the public's faith and trust in the judiciary.

The review panel found no evidence capable of substantiating the allegation that the judge induced the complainant to send a notice to terminate the lease, or that the judge "weaponized" such knowledge or used alleged contacts in the legal community to break the lease without any consequences.

The review panel concluded that the judge's response sufficiently addressed the concerns raised by the subcommittee and the remainder of the allegations were not substantiated by the materials reviewed. Accordingly, the complaint was dismissed, and the file was closed.

### ***OJC-007-23***

The complainant was a litigant in a family law proceeding involving the complainant's spouse.

In a letter to the Council, the complainant alleged that, after the complainant's separation, the complainant discovered that the subject judge was having an intimate relationship with the complainant's spouse. The complainant enclosed copies of handwritten, intimate notes attributed to the subject judge, which were addressed to the complainant's spouse. The complainant indicated that the notes were found along with the judge's business card after the complainant's spouse was arrested and charged with assaulting the complainant and one of the couple's children. The complainant advised that one of the notes was dated around the date of the couple's separation. The complainant also enclosed a copy of the judge's business card that was allegedly found with the notes.

The complainant alleged that the judge destroyed the complainant's marriage and harmed the complainant's life and that of the complainant's children. The complainant further alleged that the complainant's former spouse "undoubtedly has been directed [by] and [is] receiving advice" from the judge to benefit the spouse in their family law

proceeding. The complainant advised that the family proceeding was brought in the same courthouse where the judge presides. According to the complainant, the relationship between the spouse and the judge had stopped any progress from being made in family court to end the complainant's marriage and arrive at a proper "dissolvement". The complainant asked the Council to review the judge's appointment given that the judge violated their authority as a judge and wrongly interfered with the complainant's family life.

The complainant claimed to have sent a letter to the Ministry of the Attorney General raising these concerns. The complainant enclosed an email received from the Ministry of the Attorney General, which directed the complainant to the Ontario Judicial Council since the concerns the complainant raised involved the conduct of a judge.

The complainant indicated that the criminal law proceeding against the spouse had been assigned to a Crown attorney and a judge who work at a different courthouse than the courthouse where the subject judge presides. The complainant asked the Council to direct the Court to move the family law proceeding to another jurisdiction so that it could be "processed and heard in a trusted, fair, and untainted environment".

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation.

The subcommittee reviewed the complaint letter and the enclosures provided by the complainant. In addition, the subcommittee obtained and reviewed information and court documents in relation to the court proceedings referred to by the complainant, including scheduling information.

Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Council, composed of two judge members, a lawyer member and a community member. The review panel reviewed the complaint letter and the enclosures provided by the complainant, the information and documents from the court proceedings obtained by the subcommittee, and the subcommittee's report to the review panel.

The review panel shared the complaint subcommittee's analysis of the judicial ethical principles that apply in the context of the allegations raised by the complaint. As set out in s. 3.1 of the Ontario Court of Justice's *Principles of Judicial Office*, judges are required to "maintain their personal conduct at a level which will ensure the public's trust and confidence". Judges are nonetheless entitled to have normal private lives, and are entitled to enjoy, as much as possible, the rights and freedoms generally available to all: Canadian Judicial Council's *Ethical Principles for Judges*, 2021, ss. 2.A.4-2.A.5.

The review panel agreed with the complaint subcommittee's conclusion that the complainant's allegations regarding the judge's intimate relationship with the complainant's spouse and the effect this relationship had on the complainant do not raise an issue of judicial conduct such as would engage the public's trust and confidence in the subject judge's abilities as a judge. Rather, these allegations relate to the judge's private life.

The review panel further noted that there was no suggestion that the judge had presided in either the family or the criminal proceeding involving the complainant's spouse. The review panel agreed with the complaint subcommittee's observation that there was no information or evidence that would substantiate the complainant's accusation that the judge had been directing or advising the complainant's spouse or otherwise improperly interfering in the family law proceeding. To warrant consideration by the Council, a complainant must provide a valid and rational factual basis to indicate that a judge has engaged in misconduct. An unsupported allegation of impropriety, in and of itself, is not sufficient.

In relation to the complainant's request that the family law proceeding be transferred to a different jurisdiction, the review panel shared the view of the complaint subcommittee that the Ontario Judicial Council does not have jurisdiction to direct that a court proceeding be moved to a different courthouse. Such recourse may be available through the court system, such as by way of a motion seeking a change of venue.

Given that there was no evidence of judicial misconduct and that the complainant's request to transfer the family court proceeding to another jurisdiction was outside the Council's jurisdiction to grant, the review panel dismissed the complaint and closed the file.

### **OJC-009-23**

The complainant is the mother of a defendant who was charged and convicted of multiple offences including sexual assault and sexual assault with a weapon. The complainant alleged that the subject judge robbed her son of a fair trial by unfairly intervening during defence counsel's cross-examination of the victim/complainant.

The complainant alleged that the judge interjected to "defend" the victim/complainant and thus "meddled" with her son's defence. She alleged that this meddling occurred while the victim/complainant was struggling to answer one of defence counsel's questions, which was a crucial moment in the trial.

In particular, according to the complainant, the judge wrongly interjected after defence counsel suggested to the victim/complainant that a statement she had given to the police was untruthful. According to the complainant, when defence counsel attempted to question the victim/complainant about this statement, the judge "jumped in" and said that the statement was "inaccurate". The complainant alleged that the judge's intervention rendered the trial unfair.

The complainant questioned why the judge was sympathetic to the victim/complainant's story and whether it was because the victim/complainant was white while her son is a member of a racialized group.

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge and community member for review. The subcommittee reviewed the complaint letters and the transcript excerpt of defence counsel's cross-examination of the victim/complainant.

The complaint subcommittee obtained and reviewed a copy of the certified transcript of the cross-examination in question. The complaint subcommittee observed that defence counsel put it to the victim/complainant that her statement to police was “not truthful”. At that point, Crown counsel interjected and said: “Respectfully, Your Honour, she didn’t say it wasn’t truthful. She said it wasn’t accurate.” Defence counsel responded: “Okay”. The subject judge then stated: “I heard, I heard what she said, and I have noted it.” After the victim/complainant indicated that she was “lost”, the subject judge went on to summarize the judge’s understanding of her earlier testimony.

The complaint subcommittee thus found that the complainant’s allegation that the judge described the victim/complainant’s statement as “inaccurate” was not borne out by the transcript; rather, this statement was made by Crown counsel.

In addition, the complaint subcommittee found that the judge went on to clarify the judge’s understanding of the witness’s testimony, which is part and parcel of the exercise of the judicial function. The clarifications were not done unfairly or improperly, nor did they amount to a pre-judgment of the issues in the case, including an assessment of the witness’s credibility. The complaint subcommittee noted that, following this exchange, defence counsel continued the cross-examination without voicing any concerns about the judge’s questioning.

For these reasons, the complaint subcommittee determined that there was no evidence capable of supporting the complainant’s allegations that the judge breached their ethical duties or otherwise behaved inappropriately in the proceedings.

Moreover, the complaint subcommittee observed that the complainant’s allegations related to the manner in which the judge conducted the proceedings, which involves a matter of judicial decision-making outside the jurisdiction of the Judicial Council to consider. Decisions pertaining to the conduct of a hearing, as well as the assessment of the evidence of witnesses, fall under the authority of the judge and may be subject to an appeal in a higher court, but are not matters of judicial conduct that raise ethical concerns.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and Rule 11.1 of the Council’s Procedures on the basis that the allegations were unsubstantiated and otherwise outside the jurisdiction of the Council. Accordingly, the complaint was dismissed and the file was closed.

### **OJC-011-23**

The complainant appeared before the subject judge for a family matter involving access to his children.

In the letter to the Council, the complainant alleged the following:

- The judge ignored all evidence and accepted lies from the other side.



- In the judge’s written decision, the judge wrote, “I cannot force a child to go live with their father”, although the judge knew that the complainant’s son had requested to live with the complainant.
- The judge’s order reduced the complainant’s access to his children when compared to the previous access order.
- The judge stated that kids must want to have access and would have to initiate contact with the complainant, knowing that they would not do so because if they did, they would get in trouble with their mother and the Children’s Aid Society.
- The judge told the complainant not to speak about the order or anything related to the history of the case.
- The judge is corrupt. The judge intentionally ignored evidence to work with the CAS to cover up their illegal doings and prevent the complainant from getting justice for himself and his children. The judge also received an “incentive, possibly monetary” to do this.

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation.

The subcommittee reviewed the complaint letter and the transcripts of the proceedings before the judge.

Based on its review of these materials, the subcommittee determined the allegation that the judge ignored all evidence and accepted lies from the other side involves how the judge assessed the evidence and how the judge considered credibility, which is part of judicial decision-making. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Ontario Judicial Council does not have jurisdiction to consider complaints about the decisions that judges make in the Ontario Court of Justice.

The allegation that the judge told the complainant not to speak about the order or anything relating to the court case appears to refer to the judge making an order restraining the complainant from placing certain information on the internet. This order is an exercise of judicial decision-making, and consequently is outside the jurisdiction of the Council to review.

The subcommittee determined that the allegation concerning the judge’s order reducing the complainant’s parenting time with his children compared to the previous order raises a matter of judicial decision-making, and is outside the jurisdiction of the Council. The subcommittee further noted that the judge’s order maintained the status quo with respect to the complainant’s parenting time, or actually expanded the complainant’s parenting time, albeit not to the extent the complainant had requested.

The subcommittee found that the allegation that the judge said, “I cannot force a child to go live with their father,” although the judge knew the complainant’s son had requested to live with the complainant, is a misreading of the decision. In making this comment, the judge was quoting from a decision by another judge about the need to consider the preferences of teenagers.

The subcommittee further found that the complainant provided no information capable of supporting the allegation that the judge said the children must initiate having access with the complainant, “knowing” that they would not do so because then they would get in trouble with their mother and the Children’s Aid Society. The complainant did not provide any information that would support the belief that the children would get in trouble with their mother and the Society, or that the judge and/or the children knew they would get into trouble. A complainant must provide a valid and rational factual basis for concern about a judge’s conduct before the Council can engage in a meaningful review. A bare allegation is not sufficient.

Regarding the allegations that the judge is corrupt, that the judge intentionally ignored evidence to work with the Children’s Aid Society to cover up their illegal doings and prevented the complainant from getting justice for himself and the children, and that the judge had a possible monetary incentive to do so, the subcommittee noted that the complainant did not provide any information to support these allegations. The complaint subcommittee observed that there also was no information in the record of the proceedings to support these allegations. The complainant’s allegations about corruption appear to be based solely on subjective beliefs. Again, a complainant must provide a valid and rational factual basis for concerns about a judge’s conduct before the Council can engage in a meaningful review. A bare allegation is not sufficient.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and Rule 11.1 of the Council’s Procedures on the basis that the complaint raised allegations that are clearly outside the Council’s jurisdiction and that were otherwise frivolous or an abuse of process.

### **OJC-013-23**

The complainant appeared before the subject judge in a family law proceeding. In the letter of complaint, the complainant identified as a Moorish National Aboriginal Indigenous Natural Person and claimed that the courts do not have lawful jurisdiction to hear, present or pass judgment in any matters pertaining to the complainant due to this status. The complainant also alleged that the judge was “belligerent and aggressive” during the court proceedings.

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation. The subcommittee reviewed the complaint letter, endorsement and final order of the judge, and the audio recording of the proceedings.

The subcommittee concluded that the Judicial Council does not have authority to consider the jurisdictional issue raised by the complainant.

In addition, based on its review of the court record, the subcommittee determined that there was no basis to substantiate the complainant's allegations that the judge breached any ethical duties, or otherwise behaved inappropriately throughout the proceedings. The subcommittee observed that the judge was calm but firm when interacting with the complainant and provided multiple opportunities for the complainant to participate in the court process, despite frequent interruptions by the complainant.

The subcommittee noted that it is the responsibility and duty of a judge to control proceedings to ensure an effective and efficient use of court time, as well as a fair hearing. Decisions pertaining to procedure, the conduct of a hearing, as well as the assessment of evidence, fall under the authority of the judge, and are not reviewable by the Judicial Council as matters of judicial conduct.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and Rule 11.1 of the Council's Procedures on the basis that the complaint raised allegations that are clearly outside the Council's jurisdiction and were otherwise unfounded and therefore frivolous.